

**FILED**

**FEB 22 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHN DOE, aka Eric Lee Cruz aka Cujo  
aka Jose Ramon Paulino-Diaz,

Defendant - Appellant.

No. 05-30022

D.C. No. CR-04-00054-A-JWS

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Alaska  
John W. Sedwick, District Judge, Presiding

Submitted February 13, 2006<sup>\*\*</sup>

Before: FERNANDEZ, RYMER and BYBEE, Circuit Judges.

John Doe appeals from his conviction and the 78-month sentence imposed following his guilty-plea to drug conspiracy, in violation of 21 U.S.C. §§ 846 and 841(a)(1), (b)(1)(A), distribution of cocaine, in violation of 21 U.S.C. §§

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

841(a)(1), (b)(1)(C), and distribution of crack cocaine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A). We have jurisdiction under 28 U.S.C. § 1291.

Doe's challenge to his conviction is based upon a claim of ineffective assistance of counsel. We decline to consider this claim because the record is insufficiently developed to resolve it on direct review. *See United States v. Jeronimo*, 398 F.3d 1149, 1155-56 (9th Cir. 2005).

With regard to Doe's sentence, the district court imposed the sentence under the assumption that the guidelines were mandatory. Because Doe preserved the sentencing error, we vacate the sentence so that the district court can resentence Doe in light of *United States v. Booker*, 543 U.S. 220 (2005).

**The conviction is AFFIRMED, the sentence is VACATED and REMANDED**